

Maine Revised Statutes
Title 18-A: PROBATE CODE
Article :

§5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT

The court may appoint a guardian or coguardians for an unmarried minor if: [1995, c. 623, §1 (RPR) .]

(a). All parental rights of custody have been terminated or suspended by circumstance or prior court order;

[1995, c. 623, §1 (NEW) .]

(b). Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;

[2005, c. 371, §2 (AMD) .]

(c). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or

[2005, c. 371, §2 (AMD) .]

(d). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

[2005, c. 371, §2 (NEW) .]

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. [1995, c. 623, §1 (NEW) .]

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel. [2005, c. 371, §2 (AMD) .]

If a proceeding is brought under subsection (b), subsection (c) or subsection (d), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph. [2005, c. 371, §2 (AMD) .]

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor. [1995, c. 623, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 623, §1 (RPR). 1999, c. 46, §1 (AMD). 2001, c. 554, §2 (AMD). 2003, c. 689, §§B6,7 (REV). 2005, c. 371, §2 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the Second Regular Session of the 127th Maine Legislature and is current through October 1, 2016. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.